

STATE OF DELAWARE  
PUBLIC EMPLOYMENT RELATIONS BOARD

COLONIAL EDUCATION ASSOCIATION,  
Charging Party,

v.

COLONIAL SCHOOL DISTRICT,  
Respondent.

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U.L.P. No. 93-11-095

**PROBABLE CAUSE DETERMINATION**

The Colonial Education Association (hereinafter "Association" or "CEA") is an employee organization within the meaning of §1402(h) of the Public School Employment Relations Act, 14 DeL.C. Chapter 40 (hereinafter "PSERA"). CEA is the exclusive bargaining representative of the District's professional employees within the meaning of §1402(i) of the Act.

The Colonial School District (hereinafter "District") is a public school employer within the meaning of §1402(n) of the Act.

On November 2, 1993, the Association filed an unfair labor practice complaint with the Public Employment Relations Board (hereinafter "PERB"). An amended charge was filed on January 14, 1994. The complaint alleges that the District reassigned H. Edward Short, Jr., after twenty two years in the High School Guidance Department, to a biology teaching position in retaliation for protected activities. The Association asserts that Mr. Short has been a vocal dissenter against the District's policy of hiring guidance counselors to work beyond the regular ten (10) month school year during the summer months at an hourly rate and without benefit of the collective bargaining agreement.

On November 19, 1993, the District filed its Answer to the complaint. An Amended Answer was filed on January 27, 1994. The District denies that Mr. Short's reassignment had any connection to his involvement in alleged protected activities. The District requested that the PERB defer the issue to arbitration in order to avoid duplicative litigation because the charge involves a claim that is subject to the grievance procedure, namely, whether the employer had the right under the contract to take the disputed action. Contrary to the Association's contention, it maintains the issue of the hourly rate paid to guidance counselors working during the summer months is covered by a provision incorporated into the most recent collective bargaining agreement (1990-1993) and, therefore, is not an open issue between the parties. Finally, it disputes that Mr. Short has been involved in any protected activity since May, 1991 and asserts that he has not been subject to any discipline, reprimand or harassment by the District.

The Association's Amended Response to New Matter was filed on February 1, 1994.

#### OPINION

The Public Employment Relations Board has adopted a limited discretionary deferral policy for unfair labor practices requiring contractual interpretation. Deferral by the PERB has been limited to situations where (1) there exists a long-standing and well established collective bargaining relationship, (2) the employer is willing to arbitrate a properly filed grievance, and (3) the resolution of the contractual dispute would resolve the underlying issue presented in the unfair labor practice complaint. Red Clay Education Association v. Bd. of Education of the Red Clay Consolidated School District, Del.PERB, AULP No. 90-08-052A (1991). Unlike prior cases

which have been deferred <sup>1</sup>, this charge does not concern whether the District violated the contract and thereby breached its obligations under the statute. Rather, this charge alleges that the action taken by the District, whether or not it is in accordance with contractual provisions, violates the statutory right of the employee to freely engage in protected activities without discrimination in regards to his terms and conditions of employment.

The pleadings in this case are not dispositive of the issue. The Association has raised an issue concerning the reassignment of Mr. Short to a teaching position in which the District admits he is inexperienced <sup>2</sup>, required the State to grant a limited teaching certificate which will expire unless he takes additional educational courses to comply with the requirements for full teaching certification in this subject area, and for which he received no notification of the impending change until less than a month before the start of fall classes. The District has provided no rationale for this decision except to state that it has no contractual obligation to give a reason or prior notice of a reassignment. It asserts that assignment of staff is a function largely within the discretion of the individual building administrator.

The Association alleges that the reassignment was in retaliation for protected activities and that, although two years had elapsed since the employee engaged most directly and overtly in protected activity, this was the first opportunity for the District to take retaliatory action within the confines of the contract.

While the District may not be contractually required to provide justification for Mr. Short's reassignment in order to establish that it has a contractual right to reassign its staff, there is an obligation to set forth the rationale behind an action

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<sup>1</sup> See, e.g., Brandywine Affiliate, NCCEA/DSEA/NEA v. Brandywine School District Del.PERB, ULP 85-06-055 (2/5/86); Indian River Education Assn. v. Bd. of Education Del.PERB, ULP 90-09-053 (7/19/91).

<sup>2</sup> It is not denied that Mr. Short has never taught high school biology and has not taught a science course since 1971.

where an improper motive is alleged under the statute and supported at least on its face by the pleadings.

The pleadings raise factual and legal issues which require further consideration. These issues include but are not limited to the reason for the reassignment, the timing of the reassignment, the extent of Mr. Short's involvement in protected activities and the District's knowledge, thereof. For this reason, this charge will be processed to hearing.

#### DECISION

The District's request that the charge be deferred to is denied. Pursuant to Rule 5.6, Decision of Probable Cause Determination, of the Rules and Regulations of the Public Employment Relations Board, it is determined that the pleadings are sufficient to establish that an unfair labor practice may have occurred.

A hearing to establish a factual basis upon which a decision can be rendered will be scheduled as soon as possible.

IT IS SO ORDERED.

Dated: 25 February 1994

/s/ Deborah L. Murray-Sheppard  
DEBORAH L. MURRAY-SHEPPARD  
Principal Assistant, Delaware PERB